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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re M.S., et al., Persons Coming Under the Juvenile Court Law.	
RIVERSIDE COUNTY DEPARTMENT OF PUBLIC SOCIAL SERVICES, Plaintiff and Respondent, v. C.S., Defendant and Appellant.	E047739 (Super.Ct.No. RIJ114639) **OPINION**

APPEAL from the Superior Court of Riverside County. Martin Swanson, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed.

Diana W. Prince, under appointment by the Court of Appeal, for Defendant and Appellant.

Pamela J. Walls, County Counsel, and Sophia H. Choi, Deputy County Counsel, for Plaintiff and Respondent.

Michael D. Randall, under appointment by the Court of Appeal, for Minor A.H.

Konrad S. Lee, under appointment by the Court of Appeal, for Minors A.S., M.S., and M.A.

Defendant and Appellant C.S. (Mother) appeals from a judgment terminating her parental rights as to 2-year-old A.H. and implementing a plan of legal guardianship as to 17-year-old M.S. and 10-year-old M.A.[1] Mother argues that the juvenile court erred when it failed to (1) apply the sibling bond exception; (2) apply the parental benefit exception; and (3) make provisions for her visitation with respect to M.S. and M.A. We reject these contentions and affirm the judgment.

I

FACTUAL AND PROCEDURAL BACKGROUND

In June 2007, the Riverside County Department of Public Social Services (DPSS) filed a Welfare and Institutions Code section 300[2] petition on behalf of then 16-year-old A.S., 14-year-old M.S., and 8-year-old M.A. due to Mother's substance abuse, history of incarcerations, failure to benefit on Family Maintenance Voluntary Services, and allegations of domestic violence between Mother and her then-boyfriend. Mother had a long history of abusing methamphetamine and had tested positive for the drug while she was 30 weeks pregnant with her fourth child. She had also tested positive for

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[1] The children's older sibling, A.S., who is now almost 19 years old, was also initially a dependent of the court. The respective fathers of the children are not parties to this appeal.

[2] All future statutory references are to the Welfare and Institutions Code unless otherwise stated.

amphetamines and opiates when M.A. was born in 1998. For the most part, Mother had admitted the allegations in the petition. Mother and the children had resided with the maternal grandmother.

The children were formally removed from Mother's care and placed with the maternal aunt and uncle. The allegations in the petition were found true on July 5, 2007, and the children were declared dependents of the court. Mother was provided with reunification services and ordered to participate.

On August 1, 2007, a petition pursuant to section 300, subdivision (b) was filed to add baby A.H. The baby had tested positive for methamphetamine following his birth. Mother had tested negative but had tested positive three weeks earlier. A.H. was taken into protective custody and placed with his paternal grandparents.[3] The allegations in the petition were found true, and A.H. was declared a dependent of the court. The parents were provided with services and ordered to participate.

Initially, Mother was compliant with her case plan. She successfully completed her parenting, drug, and domestic violence programs and was working at a retail store. She was residing with her mother and was looking for appropriate housing. Her visits with her children had gone well, and she had visited them as often as possible. She was later granted overnight and weekend visits with A.H. and M.A., but these visits were not

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[3] The maternal aunt who had custody of A.H.'s older half siblings was unable to take a fourth child into her home.

possible until she obtained appropriate housing. Mother's three older children had visited their newborn baby brother, A.H., on a weekly basis and enjoyed the visits.

On January 8, 2008, due to her progress, Mother's services were continued. Overnight and weekend visits as to A.H. and M.A. were also authorized for Mother at that time.

In October 2007, A.H. was placed with the paternal grandmother. Even though Mother continued to make progress in her case plan, the social worker opined that out-of-home placement continued to be necessary because Mother had just obtained new housing and had not had sufficient unmonitored time with A.H.. The social worker also noted that Mother had not had overnight visits with A.H. because she had not had an appropriate or approved home. However, Mother had been having four-hour unmonitored visits with A.H. and had been visiting the child on a regular basis monitored by the relative caregiver. She had visited about three times a week for about an hour, and the visits reportedly went well. A.H. continued to visit with his older siblings on a weekly basis. Noting Mother's progress in her case plan, her positive attitude, and her motivation, the social worker opined that there was a substantial probability that A.H. would be returned to Mother's care.

On February 25, 2008, the court authorized A.H. to be placed with Mother on the condition that she established suitable child care and continued to make progress on her case plan. The child was placed in Mother's care the following day. At the April 9, 2008, contested review hearing, the court continued to grant Mother custody of A.H. on

family maintenance status. However, seven days later, a section 387 petition was filed alleging that the previous disposition had not been effective in protecting the child as evidenced by Mother's positive hair follicle test for methamphetamine on April 14, 2008, and that Mother had failed to benefit from services. Mother admitted to relapsing and claimed that the addiction was hard to control. A.H. was taken into protective custody and placed back with his paternal grandparents, with whom he had a "very strong bond." Mother was granted visitation a minimum of twice per week. Mother continued to regularly visit A.H., and A.H. continued to have visits with his siblings once a month at the siblings' placement.

Even though Mother was granted liberal and frequent visits with A.H., during the weeks of May 8 and May 15 she had only visited him once and for a very limited time. Mother also appeared a little more distant with the child. She had enrolled in another substance abuse program and was awaiting an available spot in Family Preservation Court. However, she failed to randomly drug test as required.

At the June 10, 2008, contested jurisdictional/dispositional hearing, A.H. was found to come within section 387. Mother's services were continued.

On June 16, 2008, the maternal aunt informed DPSS that she was unable to care for the three older children. Accordingly, other relative options were being explored. After the home was cleared, on August 28, 2008, the older children were placed in the home of the maternal grandmother, with whom they had lived for most of their lives.

Though at first Mother had shown hopeful signs, she continued to spiral down into a full relapse. She had repeatedly tested positive for methamphetamine and had failed to frequently show up for her random drug tests. In addition, her strong favorable reports from her service providers had decreased to satisfactory work, and her attendance in her substance abuse program had been poor. The case manager at Mother's substance abuse program reported that Mother's prognosis for remaining sober was poor.

Mother's services as to all her children were terminated on September 8, 2008. Following the termination of services, Mother continued to regularly visit with her children, but she was unable to overcome her longtime addiction to methamphetamine.

The *maternal* grandmother was identified as the prospective legal guardian for M.S. and M.A. She had had a lifelong relationship with all of the three older children, and it was reported that they loved her. A.S. had anticipated living with his maternal grandmother after he emancipated until he could afford his own place.

The *paternal* grandparents were identified as A.H.'s prospective adoptive parents. A.H. had been placed in their home since April 2008. He appeared happy and comfortable with his prospective adoptive parents, referring to them as "Mama" and "Papa." The prospective adoptive parents had expressed their desire to provide a loving, stable, and nurturing home for A.H.

The social worker reported that visitation between A.H. and his siblings would continue, as both caregivers knew each other and lived in the same community.

The contested section 366.26 hearing was held on January 6, 2009. Mother's trial counsel requested that legal guardianship be considered for A.H. instead of adoption. The court found A.H. to be adoptable and terminated parental rights, noting that none of the exceptions to adoption applied. The court ordered the matter referred to mediation for a postadoption visitation order.

As to M.A. and M.S., the court found that termination of parental rights was detrimental to the minors and ordered the permanent plan of legal guardianship. The *maternal* grandmother was appointed the children's legal guardian. Visits between the children and the parents were ordered to be reasonable as directed by the legal guardian. As to A.S., the court found it was not likely he would be adopted or accept legal guardianship as he was in the process of becoming emancipated. The court ordered a permanent plan of planned living arrangement with suitable relatives with preference to the maternal grandmother.

II

DISCUSSION

A. *Sibling Bond Exception*

Mother argues the juvenile court erred in finding that the sibling relationship exception to adoption under section 366.26, subdivision (c)(1)(B)(v) did not apply.[4] We disagree.

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[4] Minors A.S., M.S., and M.A. also oppose the termination of parental rights and the adoption of their brother, A.H., and join in the arguments made in their mother's opening brief.

At a section 366.26 hearing, the court determines a permanent plan of care for a dependent child. (*In re Casey D.* (1999) 70 Cal.App.4th 38, 50.) Adoption is the permanent plan preferred by the Legislature. (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 573.) If the court finds that a child may not be returned to his or her parents and is likely to be adopted, it must select adoption as the permanent plan, unless it finds that termination of parental rights would be detrimental to the child under one of the seven exceptions set forth in section 366.26, subdivisions (c)(1)(A) and (c)(1)(B)(i) through (v). (See *In re Jamie R.* (2001) 90 Cal.App.4th 766, 773.)

The sibling relationship exception under section 366.26, subdivision (c)(1)(B)(v) provides an exception to the termination of parental rights if the court finds a compelling reason for determining that termination would be detrimental to the child due to a "substantial interference with a child's sibling relationship, taking into consideration the nature and extent of the relationship, including, but not limited to, whether the child was raised with a sibling in the same home, whether the child shared significant common experiences or has existing close and strong bonds with a sibling, and whether ongoing contact is in the child's best interest, including the child's long-term emotional interest, as compared to the benefit of legal permanence through adoption." (§ 366.26, subd. (c)(1)(B)(v).)

The juvenile court undertakes a two-step analysis in evaluating the applicability of the sibling relationship exception. First, the court is directed "to determine whether terminating parental rights would substantially interfere with the sibling relationship by

evaluating the nature and extent of the relationship, including whether the child and sibling were raised in the same house, shared significant common experiences or have existing close and strong bonds. [Citation.] If the court determines terminating parental rights would substantially interfere with the sibling relationship, the court is then directed to weigh the child's best interest in continuing that sibling relationship against the benefit the child would receive by the permanency of adoption." (*In re L.Y.L.* (2002) 101 Cal.App.4th 942, 951-952.) "[T]he concern is the best interests of the child being considered for adoption, not the interests of that child's siblings." (*In re Naomi P.* (2005) 132 Cal.App.4th 808, 822.)

"Reflecting the Legislature's preference for adoption when possible, the 'sibling relationship exception contains strong language creating a heavy burden for the party opposing adoption. It only applies when the juvenile court determines that there is a "compelling reason" for concluding that the termination of parental rights would be "detrimental" to the child due to "substantial interference" with a sibling relationship.' [Citation.] Indeed, even if adoption would interfere with a strong sibling relationship, the court must nevertheless weigh the benefit to the child of continuing the sibling relationship against the benefit the child would receive by gaining a permanent home through adoption. [Citation.]" (*In re Celine R.* (2003) 31 Cal.4th 45, 61.) We review the court's finding on this issue for substantial evidence. (*In re Jacob S.* (2002) 104 Cal.App.4th 1011, 1017.)

Here, Mother failed to present sufficient evidence to support her assertion that section 366.26, subdivision (c)(1)(B)(v) applied. A.H.'s older siblings had visited A.H. since his birth in August 2007 up until May 2008 on a weekly basis, and they enjoyed the visits. Subsequently, after the section 387 petition was filed as to A.H., A.H. was having monthly visits with his three older siblings, who were living in a different relative placement, and the visits were reportedly going well. Though the visits between A.H. and his siblings may have gone well, there is no evidence to suggest that the severance of the relationship would be detrimental to A.H. A.H. was a newborn baby when he was removed from the family home. The older siblings were removed from Mother's home prior to A.H.'s birth in June 2007. Following the children's removal, A.H. was placed with his paternal grandparents, and his older siblings with their maternal aunt. Hence, A.H. and his siblings were not raised in the same household and did not share significant common experiences. There is also no evidence in the record to suggest that A.H. and his siblings have existing close and strong bonds.

The record amply supports a finding that A.H.'s relationship with his siblings was not significant. There was no testimony from the older siblings; there was no evidence of the quality and nature of the relationship or that the older siblings and A.H. shared "'significant common experiences or [had] existing close and strong bonds with [him].'" (*In re Celine R., supra*, 31 Cal.4th at p. 61.) There was no evidence that A.H. missed his older siblings or that he cried or was sad when he did not see his siblings. "'[N]ot all sibling relationships are strong or healthy,'" and "'[t]he existence of a brother or sister

does not guarantee a sibling relationship.'" (*In re Hector A.* (2005) 125 Cal.App.4th 783, 794.) "If the relationship is not sufficiently significant to cause detriment on termination, there is no substantial interference with that relationship." (*In re L.Y. L.*, *supra*, 101 Cal.App.4th at p. 952.)

Moreover, even if "the court determines terminating parental rights would substantially interfere with the sibling relationship, the court is then directed to weigh the child's best interest in continuing that sibling relationship against the benefit the child would receive by the permanency of adoption." (*In re L.Y. L.*, *supra*, 101 Cal.App.4th at p. 952.) Thus, even if a sibling relationship exists that is so strong that its severance would cause the child detriment, the court may still conclude that the detriment is outweighed by the benefit to the child from adoption. (*Id*. at pp. 952-953.) Here, though there was evidence that the siblings enjoyed their visits, there was other evidence that the nature of the sibling relationship was not sufficiently significant to cause detriment were the relationship severed. Given A.H.'s very young age at removal, it is highly unlikely that A.H. had such an existing close and strong bond with his siblings that it would cause him detriment in severing the relationship.

Regardless, the record shows that the prospective adoptive parents intended to allow ongoing contact between A.H. and his siblings. The social worker reported that visitation between A.H. and his siblings would continue, as both caregivers knew each other and lived in the same community. Because the child's prospective adoptive parents

were willing to maintain sibling contact, there was no substantial interference with the sibling relationship. (*In re Megan S.* (2002) 104 Cal.App.4th 247, 254.)

Even if we accept Mother's argument that the children have strong and positive sibling relationships and will suffer detriment from severance, and the prospective adoptive parent may not foster the relationship, there remains substantial evidence that the benefits of adoption outweigh the benefits of maintaining the sibling relationships. A.H. had spent his entire life in a state of uncertainty while family reunification was attempted. The reunification efforts failed. Now, "'the needs of the child for permanency and stability'" are paramount. (*In re Celine R., supra*, 31 Cal.4th at p. 52.) Adoption will provide a permanent home and stability. A.H. has lived with his prospective adoptive parents most of his life and is emotionally attached to them. He appears happy and comfortable in the presence of his prospective adoptive parents and knows them to be his parents, and the prospective adoptive parents expressed their desire to provide a loving, stable, and nurturing home for the child. Substantial evidence shows that the benefits of adoption outweigh the benefits of continuing the child's relationship with his older siblings. The sibling relationship exception to adoption does not apply here.

B. *Parental Bond Exception*

Mother also claims that the juvenile court erred in failing to address her argument that the parental benefit relationship exception set forth in section 366.26, subdivision (c)(1)(B)(i) applied to the termination of parental rights. Specifically, she asserts that the

court did not perform any analysis but denied her request to find a lesser plan than adoption based on a mistaken belief that all the siblings would be placed with the "paternal" grandmother. She argues that the court erred by not considering whether or not the parental benefit exception applied.

Mother's contention is based on the juvenile court's statement that Mother was "'likely to continue to have some contact given that the siblings remain with the grandmother.'" However, in reviewing the record, it appears the juvenile court's statement merely indicated that the *siblings* remained with the *grandmother*, without specification as to whether it was the maternal or paternal grandmother. Nonetheless, we are mindful that, "'[i]f the *decision* of a lower court is correct on any theory of law applicable to the case, the judgment or order will be affirmed regardless of the correctness of the grounds [on] which the lower court reached its conclusion. The rationale for this principle is twofold: (a) an appellate court reviews the *action* of the lower court and not the reasons given for its action; and (b) there can be no prejudicial error from erroneous logic or reasoning if the decision itself is correct.' [Citations.]" (*In re Marriage of Mathews* (2005) 133 Cal.App.4th 624, 632.)

We find that the juvenile court correctly found the parental benefit exception did not apply here. The parental benefit or "beneficial relationship" exception is set forth in section 366.26, subdivision (c)(1)(B)(i). (*In re Jerome D.* (2000) 84 Cal.App.4th 1200, 1206.) The exception applies where "'[t]he parents . . . have maintained regular visitation and contact with the minor and the minor would benefit from continuing the

relationship.'" (*In re Derek W.* (1999) 73 Cal.App.4th 823, 826.) The parent has the burden of proving that the exception applies. (*Id*. at p. 826.) "The parent must do more than demonstrate 'frequent and loving contact[,]' [citation] an emotional bond with the child, or that parent and child find their visits pleasant. [Citation.] Instead, the parent must show that he or she occupies a 'parental role' in the child's life." (*Id*. at p. 827.)

The parent must also show that his or her relationship with the child "'promotes the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents. In other words, the court balances the strength and quality of the natural parent/child relationship in a tenuous placement against the security and the sense of belonging a new family would confer. If severing the natural parent/child relationship would deprive the child of a substantial, positive emotional attachment such that the child would be greatly harmed, the preference for adoption is overcome and the natural parent's rights are not terminated.'" (*In re Derek W.*, *supra*, 73 Cal.App.4th at p. 827, quoting *In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.)

"'The balancing of competing considerations must be performed on a case-by-case basis and take into account many variables, including the age of the child, the portion of the child's life spent in the parent's custody, the "positive" or "negative" effect of interaction between parent and child, and the child's particular needs. [Citation.] When the benefits from a stable and permanent home provided by adoption outweigh the benefits from a continued parent/child relationship, the court should order adoption.'" (*In*

re Jasmine D. (2000) 78 Cal.App.4th 1339, 1349-1350, quoting *In re Zachary G.* (1999) 77 Cal.App.4th 799, 811.)

"'Where a biological parent . . . is incapable of functioning in [a parental] role, the child should be given every opportunity to bond with an individual who will assume the role of a parent.' [Citation.] Thus, a child should not be deprived of an adoptive parent when the natural parent has maintained a relationship that may be beneficial to some degree but does not meet the child's need for a parent. It would make no sense to forgo adoption in order to preserve parental rights in the absence of a real parental relationship." (*In re Jasmine D., supra*, 78 Cal.App.4th at p. 1350.) One court has observed that the exception found in section 366. 26, subdivision (c)(1)(B)(i) "may be the most unsuccessfully litigated issue in the history of law." (*In re Eileen A.* (2000) 84 Cal.App.4th 1248, 1255, fn. 5, disapproved on other grounds in *In re Zeth S.* (2003) 31 Cal.4th 396, 413-414.)

There must be a "'compelling reason'" for applying the parental benefit exception. (*In re Jasmine D., supra*, 78 Cal.App.4th at p. 1349.) This is a "quintessentially discretionary determination." Thus, we review the juvenile court's determination for an abuse of discretion. (*Id*. at p. 1351.) Nevertheless, "'[e]valuating the factual basis for an exercise of discretion is similar to analyzing the sufficiency of the evidence for the ruling. . . . Broad deference must be shown to the trial judge. The reviewing court should interfere only "'if [it] find[s] that under all the evidence, viewed most favorably in

support of the trial court's action, no judge could reasonably have made the order that he did.' . . . "' [Citations.]" (*Ibid*.)[5]

Here, though Mother could satisfactorily demonstrate that she had maintained regular contact with A.H. and that she was appropriate with him, she had failed to show that the child would benefit from continuing the relationship. As stated above, "the parent must show more than frequent and loving contact or pleasant visits. [Citation.] 'Interaction between natural parent and child will always confer some incidental benefit to the child. . . . The relationship arises from day-to-day interaction, companionship and shared experiences. [Citation.]' [Citation.] The parent must show he or she occupies a parental role in the child's life, resulting in a significant, positive, emotional attachment from child to parent. [Citations.]" (*In re L.Y.L*., *supra*, 101 Cal.App.4th 942, 953-954, quoting *In re Autumn H*., *supra*, 27 Cal.App.4th at p. 575.) "In other words, for the exception to apply, the emotional attachment between the child and parent must be that of parent and child rather than one of being a friendly visitor or friendly nonparent relative, such as an aunt. [Citation.]" (*In re Angel B.* (2002) 97 Cal.App.4th 454, 468.)

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[5] We note that courts have reached different conclusions as to the standard of review that applies to a juvenile court's ruling on exceptions to adoptability under section 366.26, subdivision (c)(1). In *In re Autumn H., supra*, 27 Cal.App.4th 567, the court held that a finding that no exceptional circumstances exist to prevent the termination of parental rights is reviewed under the substantial evidence test. (*Id*. at pp. 575-576.) In contrast, in *In re Jasmine D., supra*, 78 Cal. App.4th 1339, the court applied the abuse of discretion standard of review. (*Id*. at pp. 1351-1352.) For purposes of the present case, it makes no difference which standard applies because, as discussed below, we conclude that the juvenile court did not err under either test.

There was insufficient evidence that A.H. would benefit more from continuing his parent-child relationship with Mother than from adoption. He was removed from Mother's custody at birth. Though he was returned to Mother's custody in April 2008, he was again removed from her care and custody a very short time later, when her hair follicle test came back positive. Mother subsequently spiraled into her old habits of abusing methamphetamine on a regular basis, and reunification services were terminated on September 8, 2008. For about 16 months (with the exception of the short time A.H. was returned to Mother's care), A.H. had lived with his prospective adoptive parents, who had provided him with permanency and stability. There was no evidence to show that A.H. would be greatly harmed by terminating the parents' parental rights. The social worker noted A.H. was doing well in his prospective adoptive home and that his prospective adoptive parents were willing to adopt him and give him a permanent home. He was thriving in his placement without Mother being in his life. He did not ask for Mother between visits, and the lack of contact did not adversely affect him. A.H. looked to his caregivers to meet his needs and referred to them as "Mama" and "Papa." We do not deny that Mother had appropriately cared for A.H. during visits and that she appeared loving, but there is no evidence to show that A.H. appeared sad at the end of visits. Moreover, there was no showing A.H. would be greatly harmed by terminating Mother's parental rights. To require a parent show only "some, rather than great, harm at this stage of the proceedings would defeat the purpose of dependency law . . . ." (*In re Brittany C.* (1999) 76 Cal.App.4th 847, 853.)

Application of beneficial relationship exception requires the parent to show "more than that the relationship is 'beneficial.'" (*In re Casey D.* (1999) 70 Cal.App.4th 38, 52, fn.4.) The parent must demonstrate the relationship "'promote[s] the well-being of the child to such a degree that it outweighs the well-being the child would gain in a permanent home with new, adoptive parents.'" (*Ibid.*; see also *In re Elizabeth M.* (1997) 52 Cal.App.4th 318, 324 [parent must occupy more than a "pleasant place" in the child's life for the beneficial relationship exception to apply]; *In re Beatrice M.* (1994) 29 Cal.App.4th 1411, 1418-1419 [beneficial relationship exception did not apply; loss of mere "frequent and loving" contact with parent was insufficient to show detriment from termination of parental rights].)

Notwithstanding this high burden, Mother argues there is substantial evidence of a beneficial relationship because she had maintained regular visitation and A.H. would benefit from continuing his relationship with Mother. Mother relies on *In re S.B.* (2008) 164 Cal.App.4th 289 to support her argument that parents need not show a "primary attachment" for the beneficial parent-child relationship exception to apply. In *S.B.*, Division One of this court reversed an order terminating the father's parental rights over his daughter, S.B., under the parent-child beneficial relationship exception to adoption. In that case, the father complied with every aspect of his case plan, frequently visited the minor, and was devoted to her. Further, the minor loved her father and wanted to live with him. (*Id*. at p. 294-295.) The appellate court concluded the minor would be greatly harmed by loss of the significant, positive relationship the minor shared with her father.

(*Id*. at p. 301.) While factual comparisons between cases provide insight, these comparisons are not dispositive. The determination on appeal is whether there is substantial evidence to support the trial court's findings that the beneficial parent-child relationship exception did not apply. We conclude that on the facts of this case, the trial court had sufficient evidence to support its findings. Further, *S.B.* "does not . . . stand for the proposition that a termination order is subject to reversal whenever there is 'some measure of benefit' in continued contact between parent and child." (*In re Jason J.* (2009) 175 Cal.App.4th 922, 937.)

After balancing the strength and quality of the parent-child relationship against the security and sense of belonging that an adoptive placement would give A.H., the court found the preference for adoption had not been overcome. Substantial evidence supports the court's finding the section 366.26, subdivision (c)(1)(B)(i) exception is inapplicable. (See *In re Cliffton B.* (2000) 81 Cal.App.4th 415, 425.)

C. *Visitation Order*

"The superior court, sitting in dependency cases . . . , has the power and responsibility to regulate visitation between dependent children and their parents." (*In re Donnovan J.* (1997) 58 Cal.App.4th 1474, 1476.) The juvenile court cannot delegate the power to order visitation to child protective services, a social worker, a counselor, the children's caretaker, or even the children themselves. (*In re Julie M.* (1999) 69 Cal.App.4th 41, 49.) In ordering visitation, the juvenile court may vest limited discretion

with the supervising agency to consider the children's desires regarding visits with a parent. (*In re Danielle W.* (1989) 207 Cal.App.3d 1227, 1237.)

Mother contends the juvenile court's visitation order with respect to M.A. and M.S. erroneously left the issue of visitation solely to the legal guardian's discretion. She asks that we remand the matter to the juvenile court to fashion an appropriate visitation order.

Mother acknowledges that she failed to object to the visitation order in the lower court but contends that waiver is not appropriate in this case. She cites *In re S.B.* (2004) 32 Cal.4th 1287 as support for her assertion that waiver should not apply here.

In *S.B.* the court terminated reunification services and "ordered the legal guardians to make all decisions concerning parental visits between S.B. and her mother." (*In re S.B.*, *supra*, 32 Cal.4th at p. 1292.) The mother appealed, and the appellate court reversed the juvenile court's order. The Supreme Court granted review and asked the parties to additionally address the issue of whether "the mother could challenge on appeal the juvenile court's order notwithstanding her failure to object in the juvenile court." (*Ibid.*)

In the Supreme Court, the department contended that the mother's failure to object precluded the Court of Appeal from considering the issue. The Supreme Court set forth the general rules regarding waiver on appeal based on a failure to object.

"It is true that, as the Department contends, a reviewing court ordinarily will not consider a challenge to a ruling if an objection could have been but was not made in the

trial court. [Citation.] The purpose of this rule is to encourage parties to bring errors to the attention of the trial court, so that they may be corrected. [Citation.] [¶] Dependency matters are not exempt from this rule. [Citations.] [¶] But application of the forfeiture rule is not automatic. [Citation.] But the appellate court's discretion to excuse forfeiture should be exercised rarely and only in cases presenting an important legal issue. [Citations.] Although an appellate court's discretion to consider forfeited claims extends to dependency cases [citations], the discretion must be exercised with special care in such matters. 'Dependency proceedings in the juvenile court are special proceedings with their own set of rules, governed, in general, by the Welfare and Institutions Code.' [Citation.] Because these proceedings involve the well-being of children, considerations such as permanency and stability are of paramount importance. [Citation.]" (*In re S.B.*, *supra*, 32 Cal.4th at p. 1293, fn. omitted.)

The Supreme Court found that the Court of Appeal could properly determine the issue even though there was no objection in the juvenile court. It reasoned, "The Court of Appeal majority here did not abuse its discretion in entertaining the mother's challenge to the visitation order notwithstanding her failure to object to it in the juvenile court. The appeal presented an important issue of law: whether a juvenile court in a dependency case may delegate to the child's legal guardian the authority to decide whether a parent may visit the child, a question that has divided the Courts of Appeal. Moreover, because the juvenile court here had neither allowed nor prohibited visitation, but instead had delegated to the legal guardians the authority to either allow or prohibit visitation, an

appellate determination on the validity of that delegation would add certainty and stability to the child's visitation." (*In re S. B.*, *supra*, 32 Cal.4th at pp. 1293-1294.)

The posture of this case is different from *S.B.* The question in *S.B.* was whether or not the Court of Appeal had the authority to entertain the mother's issue on appeal. The question here is not whether we have the authority to entertain Mother's issue on appeal, but whether we should consider her assertion. We find that the reasons for deciding the issue and disregarding the forfeiture rule are not present here, as they were in *S.B.* The appeal here does not present an important issue of law. Unlike the order in *S.B.* that neither allowed or prohibited visitation, the order here allowed visitation under certain circumstances. The order states, "Visits between the children and the parents is to be reasonable as directed by the legal guardian." The visitation order here did not delegate the authority of visitation to the legal guardian to determine *whether* visitations would occur. Thus, the ruling here did not so heavily impact considerations of permanency and stability to compel us to disregard the usual forfeiture rules.

Furthermore, although Mother's counsel did not object to the portion of the visitation order regarding as directed by the legal guardian, the record indicates that Mother had a positive relationship with the legal guardian (her mother). Our interpretation of the record also discloses that there were no issues with regards to Mother's visitations with any of the children. Mother was receiving and participating in visitation throughout the dependency proceedings. We do not agree with Mother's characterization of the order as one that delegated the court's authority over visitation

exclusively to the legal guardian. The court set forth the guidelines of visitation and did not delegate authority to the legal guardian to determine whether visits would occur. Rather, the court's order was for reasonable visitation, which was merely to be directed by the legal guardian. The court may delegate its discretion to determine the time, place, and manner of the visits. (*In re Moriah T.* (1994) 23 Cal.App.4th 1367, 1374.)

In fact, *In re Christopher H.* (1996) 50 Cal.App.4th 1001 held that a "'bare bones'" order for "'reasonable visits'" was not an improper delegation. (*Id*. at pp. 1008-1009.) The court explained, "Only when the court delegates the discretion to determine whether any visitation will occur does the court improperly delegate its authority and violate the separation of powers doctrine. [Citations.]" (*Id*. at p. 1009.) Thus, Mother's argument fails. Contrary to Mother's contention, the order did not leave visitation solely to the legal guardian's discretion.

III

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

RICHLI
Acting P.J.

We concur:

GAUT
J.

MILLER
J.